IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5531 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE H.L.GOKHALE

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1. Whether Reporters of Local Papers may be allowed to see the judgment ?

2. To be referred to the Reporter or not ?

3. Whether their Lordships wish to see the fair copy of judgment?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

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MORBI MUNICIPALITY

Versus

MORBI MUNICIPAL KARMACHARI MANDAL

Appearance:

MR JD AJMERA for Petitioner

MR GM JOSHI, ADVOCATE for Respondent No. 1

CORAM : MR.JUSTICE H.L.GOKHALE

Date of decision: 22/10/97

ORAL JUDGEMENT

Heard Mr Ajmera for the petitioner and Mr Joshi for the respondent. RULE had been issued in this matter

on 30th July 1997 by my brother Calla, J. making it returnable on 7th August 1997. The parties were told that they should be ready for final hearing by that order. Notice as to interim relief was also issued on the same day. This matter was adjourned thereafter from time to time. Though notice as to interim relief was issued, no interim relief is granted as yet. The matter is heard finally.

2 Mr Ajmera, learned advocate for the petitioner, submitted that this case indicates as to how the benevolent provisions of a welfare statute can be misused for objects which are not contemplated thereunder. The facts of the case show that the respondent-trade union has espoused a cause of some 137 employees of the petitioner-municipality. These 137 persons came to be appointed by the petitioner-municipality during 8.10.1996 to 22.11.1996 as daily rated employees. On 24th December 1996 they made a demand that they should be made permanent by which time they had put in a service of hardly a month and half. They filed a petition in this Court on 10.1.1997 being Special Civil Application No.10081 of 1996 which was withdrawn on 8.4.1997. Thereafter they obtained a Reference to the Industrial Tribunal on 15th April 1997 being Reference (ITR) No.54 of 1997. In that Reference they filed a complaint that their services are likely to be terminated and in that they applied for interim injunction that they should not be terminated from their services. On the petitioner filing its objection, the complaint came to be rejected by the order of the Industrial Tribunal dated 1.5.1997. This complaint came to be rejected since at that time reference order had not been received by the Tribunal. On obtaining the order of Reference being Reference (ITR) No.54 of 1997 from the appropriate Government, the respondents filed another complaint being Complaint (ITR) No.12 of 1997 on 1.6.1997. In that complaint they filed a misc. application being Application No.12 of 1997.

3 That application was preseed before the learned Member of the Industrial Court in the night time at about 11.25 PM on 1.6.1997. The learned Judge by his order on that day restrained the municipality from terminating their services. The municipality filed its reply pointing out their various objections. On hearing both the learned advocates, the Industrial Tribunal allowed the Misc. Application on 1.7.1997 confirming the ad interim injunction granted earlier.

4 After that order a review application was filed by the petitioner. That also came to be rejected on

8.7.1997. Being aggrieved by these orders, the present petition has been filed.

5 Mr Ajmera, learned advocate for the petitioner, pointed out that as narrated above, the employees concerned had put in the services of one month and half when they raised demand for regularisation. They were admittedly daily-rated employees. Whether they had any status which required protection against termination at that point of time had got to be prima facie gone into by the Industrial Court. It amounts to obtaining an employment on a particular date, raising demand after about a month and half, then obtaining a Reference in about 3-4 months thereafter and then midnight interim injunction restraining the so called likely illegal termination. Mr Ajmera submits that such an exercise of power was not contemplated under section 33-A of the Industrial Disputes Act, 1947. He further submitted that many of the persons out of these 137 persons do not possess necessary educational qualifications. Some of them were over-aged to the extent of 48 years of age (as in the case of Rajendrasinhji Jadeja). Some of them are minors (as in the case of one Janak M Bhatt); some of them were not having necessary educational qualifications (as in the case of Bhavik Bhatt, who had passed 9th standard and who was appointed as clerk) and some of them were such whose date of birth was also not given in their applications. Mr Ajmera submitted that the regular set up of the petitioner-municipality was already overflowing inasmuch as the municipality had already 334 employees in excess over the 503 regular employees. On the top of it these 137 persons (who had managed to get their jobs through their contacts) were sought to be imposed by obtaining the interim orders. Mr Ajmera submitted that these persons got appointed when an elected body was in existence through contacts with the persons concerned. Only when an Administrator came to be appointed that these irregularities were noticed by the Regional Director of Municipality. Mr Ajmera pointed out that while appointing these persons, no procedure recognised by law was followed. All these objections were raised before the Tribunal and they are reflected in paragraph no.2 of the impugned order.

6 In the circumstances, Mr Ajmera submitted that unless a prima facie case is made out that the workmen concerned had a right to continue and unless it was shown that there was a prima facie violation of some right, no injunction ought to have been granted. Mr Joshi, on the other hand, submitted that in the instant case the fact is that the workmen concerned were in service and they

wanted a regularisation and therefore an injunction. He submitted that it is immaterial as to how they came into service. In fact, he went to the extent of submitting that all that the Court has to see is as to whether the employer had changed the conditions of service. That was mandate of Section 33-A read with Section 33 of the Industrial Disputes Act, 1947. Therefore, injunction was justified. Mr Joshi relying upon the judgement of the Supreme Court in the case of Hotel Imperial v. Hotel Workers' Union reported in AIR 1959 SC 1342 (particularly paragraphs 11 and 21) submitted that the Court had the jurisdiction to pass appropriate interim orders. He relied upon the judgement in the case of P.D. Sharma v. State Bank reported in AIR 1968 SC 985 to contend that the object of the Act was to maintain the status quo. He further relied upon the judgement in the case of State of Punjab v. Kailash Nath reported in (1989) 1 SCC 321 (particularly, paragraph no.7 thereof) to contend that "confirmation" is a part of the service conditions and also relied upon the judgement in the case of Lilly Kurian v. Sr. Lewina reported in AIR 1979 SC 52 (paragraph no.13) to submit that the conditions of service is a wider concept. There cannot be any quarrel with the propositions cited by Mr Joshi. The only point to be considered in the present case is as to what service conditions were being violated to the prejudice of the employees during the pendency of the Reference.

7 Mr Joshi has relief upon two other judgements. He relied upon the judgement in Union of India v. Basant Lal reported in 1992 (2) SCC 679 wherein the Honourable Supreme Court directed the railway authorities to convert the status of the casual workers to that of temporary on completing 120 days. He submitted that the Tribunal had wide powers and the Tribunal could create new contracts. Mr Joshi heavily relied upon the judgement of the Supreme Court in the case of Bhavnagar Municipality v. A. Karimbhai reported in AIR 1977 SC 1229 and contended that as stated in paragraph no.10 thereof, in order to attract section 33(1)(a), following features must be presented. That paragraph reads as follows:-

"10. In order to attract Section 33(1)(a), the following features must be present:

(1) There is a proceeding in respect of an industrial dispute pending before the Tribunal.

(2) Conditions of service of the workmen applicable immediately before the commencement of the Tribunal proceeding are altered.

(3) The alteration of the conditions of service is in regard to a matter connected with the pending industrial dispute.

(4) The workmen whose conditions of service are altered are concerned in the pending industrial dispute.

(5) The alteration of the conditions of service is to the prejudice of the workmen."

8 He also laid much emphasis on paragraph no.13 and submitted that in that particular case the subject matter being directly connected with the conversion of the temporary employees into permanent, their retrenchment amounted to rupturing the relationship between the employeer and the employees.

9 In this context what is relevant to note is that in the aforesaid case of Bhavnagar Municipality the employees concerned had put in service for over a year. They raised a demand that they should be regularised after completing 90 days of service and that Reference had been made. During the pendency of that Reference their services came to be terminated which led to a complaint. No interim injunction was sought or granted in that matter. It is in that context that the Supreme Court held that the said complaint was maintainable.

10 As stated above, the facts of the present case are quite different. This is a case where the employees had completed hardly a month and half in service when they raised a demand for regularisation. Thereafter within the next 3-4 months they obtained a Reference. The Tribunal has not considered at all as to what was the status of these employees so as to obtain an interim injunction. Admittedly, they were daily rated employees and their services could be terminated as per their terms of employment. They had no status to claim any longer duration of service at the time when they raised the demand or at the time when they sought the reference. The Tribunal could not have overlooked these facts. This is not a case where the workmen have put in a continuous service of a year during which period they were expected to put in 240 days of service. This is a case of obtaining a job and then immediately rushing to the Court to seek an injunction. To say the least, this is nothing but a misuse of the beneficial provisions for objectives which were not contemplated.

11 In case of Delhi Development Horticulture Employees' Union v. Delhi Administration reported in AIR 1992 SC 789, the Supreme Court was considering the demand of regularisation of persons employed under Jawahar Rojgar Yojana, after putting in more than 240 days of service. It was undoubtedly a different project but the fact is that the employees had put in more than 240 days of service and then they were seeking regular status. Though the observations of the Supreme Court in that case are in a general context, if any case was required to justify them, the present case provides one. In paragraph no.15 thereof, the Honourable Supreme Court has observed as follows:-

"15. Apart from the fact that the petitioners cannot be directed to be regularised for the reasons given above, we may take note of the pernicious consequences to which the direction for regularisation of workmen on the only ground that they have put in work for 240 or more days, has been leading. Although there is Employment Exchange Act which requires recruitment on the basis of registration in the Employment Exchange, it has become a common practice to ignore the Employment Exchange and the persons registered in the Employment Exchanges, and to employ and get employed directly those who are either not registered with the Employment Exchange or who though registered are lower in the long waiting list in the Employment Register. The Courts can take judicial notice of the fact that such employment is sought and given directly for various illegal consideration including money. The employment is given first for temporary periods with technical breaks to circumvent the relevant rules, and is continued for 240 or more days with a view to give the benefit of regularisation knowing the judicial trend that those who have completed 240 or more days are directed to be automatically regularised. A good deal of illegal employment market has developed resulting in a new source of corruption and frustration of those who are waiting at the Employment Exchanges for years. Not all those who gain such back-door entry in the employment are in need of the particular jobs. Though already employed elsewhere, they join the jobs for better and secured prospects. That is why most of the cases which come to the courts are of employment in Government Departments, Public Undertakings or Agencies. Ultimately it is the

> people who bear the heavy burden of the surplus labour. The other equally injurious effect of indiscriminate regularisation has been that many of the agencies have stopped undertaking casual or temporary works though they are urgent and essential for fear that if those who are employed on such works are required to be continued for 240 or more days have to be absorbed as regular employees although the works are time-bound and there is no need of the workmen beyond the completion of the works undertaken. The public interests are thus jeopardised on both counts."

12 In view of the discussion made above, there is no doubt that the Tribunal has grossly erred in law and on the facts of the case in exercising the jurisdiction to grant initially the midnight interim order and thereafter to confirm the same. Mr Joshi submits that the said order being an interim order, this Court ought not to interfere with the same. He further submitted that all that is expected of the petitioner is to approach the Industrial Tribunal and seek its approval in case they want to terminate the services of the employees concerned. As stated above, the protection of law under section 33 of the Act is meant for those who are covered under the sweep of the legislation. It cannot be permitted to be usurped by the persons who by no stretch of imagination can be said to have had a status for seeking the injunction which they sought and which the Tribunal has granted. The entire order was totally uncalled for and is contrary to the provisions of law as also on the facts. The impugned orders dated 1.7.1997 passed in Misc. Application No.12 of 1997 and the order dated 8.7.1997 passed in Review Application No.14 of 1997 are therefore required to be interfered and are accordingly set aside. RULE issued on 30th July 1997 is made absolute. In view of the fact that the persons concerned are employees, no cost is awarded.

13 Mr Joshi applies for stay of this order. On a querry from the Court as to what the municipality proposes to do hereafter, Mr Ajmera states that further action of the municipality will require at least a couple of weeks after a copy of the order is received. In that view of the matter, no such stay is called for.

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